IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTHONY KOTERBA, DAVID STROHAKER and ALLEN SHALE, citizens of the State of Ohio, and G. L. SHALE, a citizen of South Dakota

vs.

JOHN S. DUSS, GOTTLIEB REITHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFEN, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE C. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOEH, FREDERICKA MUNTZ, DOROTHEA HOEHR, ERGINA LAUTENSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania, and THE UNION COMPANY, a corporation citizen of the State of Pennsylvania.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Christian Schwartz, a citizen of the State of West Virginia, Anthony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota, respectfully represent as follows:

The questions involved in this cause are based to a large extent upon certain instruments of writing in evidence as follows, viz:

1st. George Rapp, and with him certain associates, left the Kingdom of Wertember about 1803, and acquired seven thousand acres of land in Butler County, Pennsylvania, and there established a town called Harmony.

The first of the written instruments referred to is dated February, 15, 1805, and was executed there. It is printed as "Exhibit A," page 17, and also in the Master's Report, page 128, Vol. 1, of the Record.

This instrument was one of adoption of new members. The community is described therein as "George Rapp and his associates."

2d. In the year 1814 "George Rapp and his associates" removed to Posey County, Indiana, and there established a town called Harmony; and in the year 1815 sold the Butler lands and town for $100,000.

Another instrument of adoption was entered into, dated January 21, 1821, in Indiana. It is "Exhibit B," printed on page 50, and in the Master's Report, p. 131, Vol. 1.

The parties therein are "George Rapp and his associates" of the second part, and others, subscribers, of the first part. It is called an "Agreement, treaty and alliance."

3d. In the year 1825 George Rapp and his associates acquired three thousand acres of land on the Ohio River, in Beaver County, Pennsylvania, about eighteen miles below the City of Pittsburgh, having a frontage of about three miles on the banks of the Ohio River, and there established the Town of Economy, laid out streets, built a "great house" for Rapp and a large number of substantial brick houses, cultivated farms, established vineyards, made wine,

erected woolen mills, flour mills, silk factory and other industries, to employ the labor of members and to support, maintain and clothe themselves.

The title to the lands was taken in (M. R. 142) the name of Frederick Rapp, who on July 20, 1825, executed a declaration of trust that all the property—real, personal and mixed—which was then or which might afterward come into his possession, was the property of the Society.

In this instrument the name "Harmonie Society" is for the first time used, in a descriptive and informal way.

These lands are highly and productively developed for oil and gas. The Trust Estate and property of the Society is not less than three millions of dollars.

4th. Another instrument dated March 9th, 1827, was executed at Economy, and is "Exhibit C," p. 52 (Vol. 1), and is printed in the Master's Report, p. 133, (Vol. 1.)

The preamble recites the formation of a community by George Rapp and many others; recites the purposes for its formation and its principles, and also the necessity existing that the condition of membership should be clearly understood, and that the rights and privileges and duties of every individual should be defined.

Thereupon, upon the one part, the signers, citizens of Beaver County, agree with "George Rapp and his associates" of the other part upon certain things therein mentioned.

5th. On the 31st day of October, 1836, a new contract or agreement was executed. It is "Exhibit D," p. 87, Master's Report 139, Vol. 1. The whole purpose of this instrument is to revoke the 6th article of the articles of March 9, 1827, providing for restitu-

tion of property severally contributed by them to retiring members and to substitute equality of ownership in the property of the Society so contributed and which might be subsequently acquired.

This system of restitution is denounced as a departure from the great principle of a community of goods; and by these articles of 1836, the owners of the right to restoration convey to themselves and to all subsequent members all the property of the Society—real, personal and mixed, and afterwards to be acquired, "now and forever," into joint and indivisible stock." In no other respect are the prior articles affected.

6th. In 1834 Frederick Rapp, the Trustee, died, and an instrument dated July 5, 1834, was executed, reciting his death and constituting George Rapp the general agent of the Society, and defining his powers and declaring his trust for the Society.

In pursuance of this instrument, George Rapp appointed R. L. Baker and Jacob Henrici general agents and trustees for the society.

This instrument is printed in the Master's Report, pp. 143-144-145, Vol. 1, and is "Exhibit No. 85."

7th. George Rapp died in 1847, and in consequence of his death an instrument was executed dated August 12, 1847, (Master's Report, p. 146, Exhibit 83; also as Exhibit 'E,' p. 61), expressly re-establishing the provisions of the articles of the 9th of March, 1827, and of 31st of October, 1836, and providing for a management of affairs by a board of nine elders and a board of two trustees,—all being named therein; the Board of Elders to be self-perpetuating; the trustees to be members of the Board of Elders. The trusts for the society are continued.

The society continued to be divided into two classes, viz: the governing board having all the power, and the general members deprived of any power or authority, and entitled only to maintenance.

8th. The next articles in point of date are those of April 30, 1890. ("Exhibit F," p. 67, Vol. 1.) They purport to be ratification of acts done by the elders and trustees, and re-affirm the articles of 1817.

9th. There are two additional articles of later date; the first is dated Dec., 1892, intending to give to the trustees power to borrow money. ("Exhibit G," p. 74, Master's Report, p. 437;) and the second is dated April 11, 1894, ("Exhibit 80," Master's Rep., 223, Vol. 1,) and intending to authorize sale of all the society property to the Union Company.

10th. The articles of 1805 bore the names of 750 subscribers; to the articles of 1827 there are 666 signatures (Master's Rep., 133); to those of 1836 there are 424 signatures (p. 139); to those of 1847 there are 288 signatures (p. 146); those of 1890, 45 signatures (p. 204); the articles of 1892, 33 signatures (p. 213); to the articles of 1894, 18, being all of the membership (p. 222).

11th. The bill in this cause names all the then members, sixteen in all; the record, Dec. 5, 1898, suggests the death of seven of those,—leaving then nine members, of whom one or more may have since died.

There being no men left in sufficient number to serve, four women were added to the Board of Elders.

Duss (Vol. 2, p. 293) gave the names of the Board of Elders:

Fredericka Muntz,
Regina Lautenslager,
Maria Deim,
Karolina Molt,
Susie C. Duss,
Franz Gillman,
Conrad Hermansdoerfer,
G. Reithmuller.
John S. Duss.

Of these Reithmuller, Hermansdoerfer, Maria Deim and Regina Lautenslager are dead.

This society is now so far voluntarily reduced in numbers as therefore to be incapable of fulfilling the purposes and principles of a communistic society and a patriarchal government, especially as all the members now living are required for governing, and there remain no members to be governed.

12th. Between the 8th of March, 1892, and June , 1892, Duss, the senior Trustee, purchased the interest of seventeen members of the society in the property of the society, paying therefor about five thousand dollars each out of the trust funds in his hands. The bills of sale (Ex. 10
recite the probable value of the assets and property of the society, and recites:

"I am entirely satisfied to accept as my full share and in-
"terest therein said (consideration), and I will never hereafter
"make any claim for any sum whatever, nor for the delivery
"of any other property of said society to me whatever, nor for

"the delivery of any other property of said society to me no "matter what may be the value of the property and assets of "said society after payment of its debts."

Of these seventeen eleven were admitted to membership in the year 1890, and the remainder, save one in the years 1892 and 1893. All were in the prime of life but one Frederick. Of the remaining membership—nine in number—Duss and his wife are about 36 years of age, and the others range from 50 years to 80 years of age. The only male member, Franz Gilliman, is an imbecile.

13th. On April 12th, 1894, the Trustees conveyed to the Union Company (a co-defendant), all its property in fee simple clear of the Trusts upon which they held it, including every acre of land, and every tenement, receiving in payment therefor its grossly inadequate capital stock of $400,000. This company is organized under the corporation laws of Pennsylvania, for the purpose of buying and selling real estate. The members of the society are tenants at will of the houses they occupy.

The Bill in this case was thereupon filed, as The Union Company had it in its power to dispose of all the property of the society apparently clear and freed from the Trusts, which are not expressed on the face of the deeds by which titles appear in the name of the Trustees.

Shortly after this conveyance was made Reithmuller the junior Trustee, died, and John S. Duss, the senior Trustee, is the sole Trustee.

14th. The Bill proceeds upon the theory that the Economy Society is non-existent, and that the Trusts have failed, and therefore the defendants are: the members surviving at the time the Bill was filed and the Union Company which has actual possession of the Trusts Estates and properties. The other defendants, Hice and Reeves, were brought in connection with other matters referred to in the Bill and to which it is not now material to make further reference.

QUESTIONS INVOLVED:

THE QUESTIONS INVOLVED IN THE CONSIDERATION OF THIS CAUSE, ARE BASED UPON THE FOLLOWING CONTENTIONS OF YOUR PETITIONERS:

1st. As the constitutions of the society do not provide a terminal period of life, nor contemplate its death, or make any provision for the distribution of the corpus of the Trust property in the event of its dissolution; and as the titles to the trust properties are in fee and absolute in the Trustees;

A. The last surviving member of the society is not entitled to take the Trust estates by reason of anything contained in those constitutions and Trusts, either as joint tenants with right of survivorship, or by way of tontine;

B. That the Trusts were created for the society as a society, and not for the members;

C. That upon dissolution of the society from any cause, and the consequent failure of the Trusts, the properties of the Trusts do not become bona vacantia, because the society is not an incorporated body;

D. That in the event of such dissolution and consequent failure of the Trust, the corpus of the Trust property must revert to

those who at any former time owned the property and were donors of the Trust properties, and to their heirs and legal representatives, by way of resulting Trust;

E. That the plaintiffs are in the class of reversioners, claiming through ancertors who were among the donors of the trust properties, and as their heirs and legal representatives.

II.
THAT THE SOCIETY HAS CEASED TO EXIST AS A SOCIETY.

A. Because the present members and their officers, no longer conform to the principles of the society, in maintaining a patriarchal form of government, with community of goods as adopted in the apostolic age, nor uphold celibacy and the non-sexual intercourse of married people who are members, nor practice or enforce the other doctrines for which the society was formed, and for the maintenance of which the said Trusts were established.

B. Because the government of the society has not kept up its membership by admission from time to time of new members; but that the present trustee has endeavored to reduce the membership to such limited numbers and such feebleness of remaining members, as to make him practically the sole owner and controller of the large fortune embodied in these Trusts subject only to the very slight disbursements necessary for the lodging, clothing and maintenance of seven old German peasants.

C. That the surviving Trustee, John S. Duss, has entered into a process of liquidation of the affairs of the society, and has partitioned part of its property with a view to his sole ownership of the

Trust property, by the purchase of interests of seventeen of its younger members, for sums averaging about $5,000 each, paying for the same out of the trust properties in his hands. This average payment is substantially a full share of each one of the property on the basis of values submitted to them by Duss.

D. That thereby he has so depleted the membership that there remain only nine persons, including himself and wife, of advanced years (except himself and wife), and the only male member left (except himself) is an imbecile; and that he is practically now the possessor of all the property of the society, which is of great value, burdened only by the support of a very few old peasant people; and with the consequent result that the surviving members are not sufficient in numbers to fill the Board of Elders and the Board of Trustees, as required by the constitution of 1847.

E. That the said Duss, who is now the surviving Trustee, in pursuance of his scheme of liquidation, and of relieving himself from the burdens of his Trusts, has caused to be organized a corporation for profit under the laws of Pennsylvania, known as the Union Company, and has conveyed to it in fee simple clear of trust, all of the Trust properties held by him, thus divesting the society of all its property, and delegating to a Board of Directors of a capitalistic corporation the functions, rights, powers and duties exclusively delegated to the Board of Elders and Board of Trustees, and diverting, as far as he is able, the ultimate destination of the Trust properties from the reversioners, under its deeds and constitutions, to the disposition and destination which the laws of Pennsylvania apply to the assets and properties of corporations for profit. And that the majority of the Board of Directors of the Union Company are non-members of the society.

That the Trusts are not disclosed by the deeds under which the Trustees hold the property of the society, but by other investments.

III.

Among the other questions involved are the following:

A. That the constitutions and form of government of the society are contrary to and in violation of public policy, and a trust for the support of such a society is illegal and void.

B. The society is an unincorporated communistic association not organized for a religious, charitable, literary or scientific purpose, and being such, is in capable of holding property itself directly or indirectly through trusts for its benefit.

C. That as neither the deeds, terms of the trust or the constitutions of the society, contemplate its dissolution at any future time, but do contemplate a never-ending existence, the trusts violate the rule against perpetuities.

Errors.

The petitioners respectfully represent to this Honorable Court, that the Circuit Court of Appeals has erred in holding:

1st. That where trusts of property have been created for the benefit and use of an unincorporated communistic society, not organized for any religious, charitable, scientific or literary purpose, and where the trust properties are held by the Trustees by separate conveyances not disclosing the Trusts, and in fee simple; and where no terminal period of the life of such association is provided for and no remainder over is created to take effect in the event of the death or dissolution of the society from any cause; or where there is a failure of the Trusts:

A. The grants are not determinable fees:

B. The property covered by the Trusts does not revert by way of resulting trust to the donors, if living, or to the heirs and legal representatives of those who are dead:

C. That such community is capable of holding real and personal property directly, or through trusts created for its use and benefit:

D. That such absolute conveyance in fee in trust for a society which by its constitution contemplates a never ending existence, does not transgress the rules against perpetuities.

2nd. That where such unincorporated community has been organized for the maintenance of principles and purposes, and under the form of government, hereinafter mentioned, such organization is not in contravention of public policy, and trusts created for its benefit, use and support, are not void: The said purposes, principles, and mode of government being in brief as follows, viz:

Purposes and Principles.

A. Community of goods:

The society is formed "upon the basis of christian fellowship, the principles of which being faithfully derived from the sacred scriptures, *includes the government of the Patriarchal age, united to the community of property adopted in the days of the apostles.* * "

B. Celibacy, and the non-sexual intercourse of married members.

C. The concretion of all separate properties of individual members into the single ownership of the Society.

D. Unpaid labor of members for their lives, the accretions of which pass to the ownership of the Society.

Mode of Government.

A. A patriarchy, consisting (until 1847) of George Rapp as the Patriarch.

B. The division of the status of members into two classes, viz.:

(a) The Patriarch, who held, possessed and disbursed the Trust properties, without control or account, and had and exercised absolute power to make laws and regulations, and enforce the same by expulsion, remonstrance or other discipline.

(b) The members as such had no voice or vote; their duties are:

To submit faithfully to the laws and regulations; to manifest cheerful and ready obedience; to labor with the hands of themselves and their families; to give to the Patriarchy all their individual lands, goods, money and chattels.

Their only rights are:

To be present at every religious meeting; to receive such instruction in church and school as may be reasonably required for their temporal good and for their eternal felicity;

To receive the necessaries of life, such as clothing, meat, lodging in health and strength, and in sickness and infirmity.

C. These purposes, principles and mode of government continued until the death of George Rapp, when the powers which he had possessed and exercised were vested in a dual patriarchy, the purposes and principles of the Society remaining unchanged. This duality consisted of a Board of Elders of nine members who are named in the articles; two of whom constituted a Board of Trustees.

The powers of the Board of Elders are:

(a) Exclusive regulation of internal affairs, appointing and removing of Superintendents, and to see that members perform their assigned duties;

(b) To determine all disputes and misunderstandings; to admit new members and to expel; to make rules, laws and regulations; to appoint spiritual leaders.

(c) To remove members of its own board and of the Board of Trustees:

(d) To fill all vacancies in either Board in the future:

The Board of Trustees take all titles in trust, and exercise all their powers without accounting, and have exclusive charge of all external affairs, and the management and control of the Trust properties, and of all disbursements.

The members have no right of voice or vote in the nomination or election of either board, or in filling vacancies therein; possess no control in any manner over the assets of the society, or of the disbursements; and their rights and duties remain the same without change or enlargement as they existed prior to the articles of 1847.

Under the laws of Pennsylvania this community could not be incorporated to maintain its purposes and principles, nor exercise its mode of government.

3rd. The Court erred in holding that the petitioners cannot maintain their Bill against individuals in whose possession are the Trust properties and assets which were of the society, based upon the facts that the life of the society had ended and the purposes for which the trusts were created had terminated, and that the trusts had failed; and that the properties of said trust therefore reverted by way

of resulting trust to the donors living, and to the heirs and representatives of those dead, among whom the petitioners admittedly are, because:

Petitioners could not, under the articles of 1847, maintain separate individual actions against the society as a going or existing society to recover specific contributions of their respective ancestors out of a valid and existing trust.

4th. The Court, while admitting that the trusts recited in the bill had been created for the society *as a society*, fails to pass upon the questions whether the trusts, so created, constituted a joint tenancy with right of survivorship or a system of tontine, or in the event of a dissolution of the society by common consent or otherwise, what the ultimate destination of the trust property will be.

The Court further erred:

5th. In holding that the petitioners cannot maintain their bill, because the society is not dissolved for the reasons:

(a) That such dissolution requires the common consent of the few remaining members, and no such consent has been shown.

(b) That the following facts do not work a dissolution of the community:

(1) The failure to keep up the society in numbers by the admission of new members;

(2) The partition of the trust funds yielded to seventeen members of the society whose expectancy of life was excellent, for the purchase of their interests in the property of the society.

(3) The reduction of membership so that there does not remain a sufficient number to fill the Board of Elders (which it is required shall consist of nine members) except by a violation of the laws and usages of the community in the selection of women to fill the enforced vacancies in the Board of Elders.

(4) The concentration of the power of the Board of Trustees into the hands of John S. Duss as sole trustee.

(5) The entire absence of a membership for the governors to govern.

(6) The creation of a corporation known as the Union Company, organized under the laws of Pennsylvania for profit, authorized to buy and sell real estate, and the conveyance to said corporation of all the trust properties of the society in exchange for its capital stock, the members of the society being tenants at will of said corporation, thus disabling the trustees from control of the *corpus* of the trust as confided to them.

(7) The abandonment of the doctrine of community of goods, and the concentration of the actual use, enjoyment and control of its members' wealth in one man, John S. Duss, subject only to the slight charge and expense of maintaining seven German peasants of the laboring class, in lodging, food, clothing and medicine.

(8) The abandonment of the principles of celibacy.

6th. The Court further erred in holding that the trustees were competent under the trusts as declared, to convert the *corpus* of the trust property by conveyance to the Union Company, and thereby defeat the reversion of the property of the Trusts in due lawful course upon the failure of the trusts, and substitute therefor the destination which the laws of Pennsylvania provide in cases of the dissolution of corporations for the distribution of its property; and in the meanwhile subjecting the *corpus* of the trust properties

to the burden of corporate taxes, liability for debts of the corporation, and the hazards of the corporate business.

And in failing to hold that if such conveyance were lawful, it worked a dissolution of the Society, and if not lawful, it was such waste as demanded the appointment of a receiver.

7th. In failing and refusing to consider and pass upon those provisions of the constitutions of the Society, which, petitioners claim, recognize as donors of the trust properties (among others) the ancestors under whom petitioners claim, and to whom the trust properties revert upon the failure of the trusts.

8th. In holding that the facts fail to disclose that the said Duss, with others, have entered into a combination to terminate the life of the Society, to liquidate its affairs, and to take to himself as sole surviving member, by way of survivorship, all the estates and properties of the Society.

Additional Reasons for the Allowance of the Writ.

The petitioners respectfully represent to the Court the following additional reasons why the writ of *certiorari* prayed for should be allowed:

First. The values of the properties involved in this cause aggregate, as they are informed and believe, the sum of at least $3,000,000.

Second. Many of the persons who will be interested in the distribution of the assets and property which were of the society, live in several judicial circuits of the United States, and some of the trust properties are situated in other judicial circuits other than the Third Judicial Circuit, so that the decree in this cause (if not reversed) will not preclude other and, perhaps, different decrees in other courts.

Third. The questions involved in this case affect the general status of many similar unincorporated communistic associations throughout the United States, as respects questions of public policy, the right to hold property directly or indirectly through trustees, as to the character, extent and duration of trusts created; and as to reversionary rights upon the failure of the trusts.

Fourth. That the purposes and principles and mode of government of the Harmony Society have been before this Honorable Court in several causes and before the Supreme Court of the State of Pennsylvania, but in them the consideration of the contentions arising in this cause either did not arise, or was defeated by questions of laches, release or failure of the pleadings to properly present them for adjudication.

No other case than this has been presented to any court which involve:

1st. The dissolution of the society, and the failure of the trusts created for its benefit, for the various causes hereinbefore mentioned.

2nd. The rights of reversioners by way of resulting trust to the properties in distribution.

The prior cases are fully presented in the brief of counsel accompanying this petition.

Fifth. In the event the life of the society has ended and that therefore the trusts have failed, the petitioners and those who stand with them are without any adequate protection against the acts of the Union Company in the selling or incumbering or waste of the property of the trusts, which it holds by conveyance without notice to purchasers.

Wherefore your petitioners respectfully pray that a *writ of certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court, on a day certain, to be therein designated, a full true and complete transcript of the record and of all proceedings of the said Circuit Court of Appeals in the said cause therein, entitled Christian Schwartz, a citizen of the State of West Virginia, Anthony Koterba, David Strokaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota, against John S. Duss, Gottlieb Riethmueller, Franz Gillman, Conrad Hermansdoerfer, Edward Kellerman, Johanna Hermansdoerfer, Susie G. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Maria Diem, Barbara Boeh, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, Christian Rall, Henry Hice and John Reeves, citizens of the State of Pennsylvania, and The Union Company, a corporation citizen of the State of Pennsylvania, to the end that said cause may be reviewed and determined by this Court, as provided in Section 6, of the Act of Congress, entitled, "An Act to establish Circuit Court of Appeals, and to define and to regulate, in certain cases, the jurisdiction of the Courts

of the United States, and for other purposes," approved March 3, 1891 (26 Stat. 826, ch. 517) and that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the said Act, and that the said decree of the said the United States Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court,

And your petitioners will ever pray.

CHRISTIAN SCHWARTZ,
ANTHONY KOTERBA,
DAVID STROHAKER,
ALLEN SHALE,
G. L. SHALE,

By

SHIRAS & DICKEY,
S. SCHOYER, JR.,
J. J. MILLER,
S. B. SCHOYER,
Att'ys, for Petitioners.